

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New        )  
Rules I through IX regarding debt        )  
collection services provided on behalf        )  
of other agencies        )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 7, 2014, at 2 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on December 30, 2013. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to terms found in this subchapter:

(1) "Collection methods" means any action taken in an attempt to collect on a debt, including but not limited to making a demand for payment, issuing collection notices, obtaining a judgment, and levying wages and bank accounts.

(2) "Criteria for uncollectibility" means the agency's written standards stating the collection methods that must occur in order for the agency to determine that the debt is uncollectible.

(3) "Unliquidated debt" means a debt where the amount is unassessed, unsettled, or disputed.

(4) "Write off" means to remove the debt from accounts receivable.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-101, 17-4-104, 17-4-105, 17-4-106, 17-4-107, 17-4-108, MCA

REASONABLE NECESSITY: Proposed New Rule I defines the terms used in the new chapter that will be added into ARM Title 42, which will house the new rules being proposed in this notice regarding the debt collection services the Department of Revenue provides for other agencies. The inclusion of this proposed new rule will

add clarity.

NEW RULE II AGENCY'S SUBMISSION OF DEBTS TO DEPARTMENT

(1) Prior to submitting any debt to the department for collection services, the agency shall:

(a) enter into a memorandum of understanding with the department addressing debt collection services; and

(b) establish criteria for uncollectibility and provide that criteria to the department.

(2) The agency shall not submit to the department any unliquidated debts.

(3) The agency must have followed its internal policies and procedures regarding debtor notification and dispute resolution on any debts it submits to the department.

(4) To submit a debt to the department, the agency shall certify the amount of the debt and that the debt is uncollectible in accordance with the agency's criteria for uncollectibility.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-104, 17-4-109, MCA

REASONABLE NECESSITY: Proposed New Rule II sets forth the requirements an agency must meet prior to turning a debt over to the department for collection services. The submitting agency is required to have created and complied with its criteria for determining that a debt is uncollectible. The memorandum of understanding between the department and the submitting agency will provide the detailed steps for both agencies to follow and allow for the submitting agency to attest to its adherence to the criteria.

NEW RULE III DEPARTMENT'S REVIEW OF SUBMITTED ACCOUNTS

(1) The department will only accept a debt for collection services if the department determines that the submitting agency has met its criteria for uncollectibility, unless the agency is exempted from this requirement under 17-4-105, MCA. The department will notify the agency of its acceptance or rejection of the debt for collection services.

(2) If the department determines that a submitting agency has not met its criteria for uncollectibility, the department may return the debt to that agency.

(3) Upon the department's request, the submitting agency shall submit all relevant evidence regarding a debt, including but not limited to documentation of the collection methods undertaken by the agency and any information that substantiates the debt.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-104, MCA

REASONABLE NECESSITY: Proposed New Rule III sets forth the process the department will use to review and make determinations relative to debts being submitted for collection services. The department has a statutory duty to evaluate

whether the submitting agency has met its criteria for uncollectibility. This proposed rule clarifies that upon making this determination, the department will notify the submitting agency whether it has accepted the debt for collection services. The proposed new rule also clarifies that the department has the authority to request documentation from the submitting agency in order to review any debt that the agency is submitting for collection services.

NEW RULE IV TRANSFER OF DEBTS TO DEPARTMENT (1) Upon the department's acceptance of a debt for collection services, the debt is transferred to the department.

(2) Once a debt has been transferred to the department, the submitting agency shall:

- (a) write off the debt;
- (b) cease all collection activities on the debt;
- (c) forward to the department any payment received by the agency; and
- (d) update the department with any information received relating to the debt, including notification that the debtor filed for bankruptcy or has new contact information.

(3) If the submitting agency receives payment on a debt that has been collected in full, the agency shall refund the overpayment to the debtor.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-104, 17-4-105, MCA

REASONABLE NECESSITY: Proposed New Rule IV sets forth the process for transferring a debt from an agency to the department. The rule also describes the actions an agency must undertake on a debt after it has been transferred to the department. The proposed rule further sets forth the steps the submitting agency must take should it receive payments from or new information about the debtor after transferring and writing off the debt.

NEW RULE V DEBTOR APPEALS ON VALIDITY OF TRANSFER (1) The department shall notify the debtor that another agency has transferred the debt to the department for collection services. The notice of transfer shall identify the debt and provide:

- (a) a statement that the department intends to undertake collection activities;
- (b) payment information;
- (c) the department's contact information, including phone number and mailing address; and
- (d) the debtor's appeal rights as set forth in (2).

(2) To request a hearing before the department on whether the transfer of the debt from the agency to the department was valid, the debtor must submit a written request stating the basis of the debtor's objection within 30 days of the date on the notice of transfer. Failure to timely submit a written request shall be deemed an admission that the debtor agrees that the debt stated in the notice of transfer is due and owing.

(3) The department shall not make any determination regarding the validity of

the underlying debt. If the debtor's objection to the debt transfer includes a challenge to the validity of the underlying debt, the department may return the debt to the submitting agency. The debtor is not entitled to a hearing on the validity of the debt if the debt has been the subject matter of any proceeding to determine the validity of the debt and a decision made as a result of that proceeding has become final.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-105, MCA

REASONABLE NECESSITY: Proposed New Rule V informs the public of the process the department will use to notify a debtor when a debt has been transferred to the department for collection services. The proposed rule further explains the opportunity a debtor shall have to request a hearing concerning the validity of the debt transfer and the time period in which the debtor must make this request.

Because the validity of the underlying debt has already been attested to by the submitting agency, as set forth in proposed New Rule II, proposed (3) of this rule limits the scope of the debtor's objection to only the validity of the transfer of the debt to the department for collection, not to the validity of the debt itself. Any challenges to the validity of the debt must be resolved by the submitting agency, not by the department.

#### NEW RULE VI DEBTOR APPEALS ON DEPARTMENT'S COLLECTIONS

(1) The department shall notify the debtor when it identifies funds that may be subject to offset. The notice shall:

- (a) identify the debt and the funds held;
- (b) state that the department will hold the funds for 30 days pending receipt of a hearing request;
- (c) inform the debtor of the right to request a hearing on the potential offset of the funds held;
- (d) provide the department's contact information, including phone number and mailing address; and
- (e) identify the methods for filing an objection to the offset.

(2) To request a hearing on the potential offset of the funds held, the debtor must submit a written request to the department stating the basis of the debtor's objection within 30 days of the date on the notice of offset.

(3) If the 30 days provided for in (2) expire without the debtor requesting a hearing, the department will apply the held funds to the debt.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-105, MCA

REASONABLE NECESSITY: Proposed New Rule VI informs the public of the process that the department will use to notify a debtor when funds have been identified that may be used to satisfy a debt held by the state. The proposed new rule provides the specific information the department will include in its notice to the debtor regarding the debtor's opportunity to request a hearing to address the

application of the held funds to the debt. The proposed new rule further sets out the requirements for requesting a hearing and the amount of time the debtor has to do so.

NEW RULE VII APPEAL HEARINGS (1) Hearings on debts owed to an agency other than the Department of Public Health and Human Services will be conducted by the department. Such hearings will be conducted pursuant to 15-1-211, MCA, and ARM 42.2.613 through 42.2.621.

(2) Hearings on debts owed to the Department of Public Health and Human Services will be conducted by that agency.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 15-1-211, 17-4-105, MCA

REASONABLE NECESSITY: Proposed New Rule VII informs the public of how the hearings on transferred debts will be conducted. The proposed new rule further explains that the Department of Public Health and Human Services, rather than the Department of Revenue, conducts hearings on its transferred debt.

NEW RULE VIII WRITE OFF OF AGENCY DEBT BY DEPARTMENT

(1) Upon determining that a transferred debt is uncollectible or that the cost of continued collection activities would exceed the amount of debt, the department shall write off the debt and cease collection activities.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-107, MCA

REASONABLE NECESSITY: Proposed New Rule VIII describes when the department will write off a debt that has been transferred to it for collection services if deemed uncollectible or cost prohibitive to pursue.

NEW RULE IX COLLECTION SERVICES FEE (1) The department shall collect a service fee for the cost of collections. Any payment the department receives will first be applied to the collections service fee and then to the transferred debt. Any payment the submitting agency receives on a transferred debt is also subject to the collections service fee.

AUTH: 15-1-201, 17-4-110, MCA

IMP: 17-4-103, 17-4-106, MCA

REASONABLE NECESSITY: Proposed New Rule IX describes the collection services fee that the department will charge for the cost of collection services and the manner in which payments will be applied. It also clarifies that all payments, even those received by the submitting agency, are subject to the collection services fee.

4. Concerned persons may submit their data, views, or arguments, either

orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov and must be received no later than January 13, 2014.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. It can be found by selecting the "Administrative Rules" link in the left hand column of the homepage under the "Public Meetings" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at 406.444.3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of House Bill 168, L. 1999, Betty Lou Kasten, was notified by regular mail on November 5, 2013.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed new rules contained in this notice will not significantly and directly impact small businesses.

/s/ Laurie Logan  
LAURIE LOGAN  
Rule Reviewer

/s/ Mike Kadas  
MIKE KADAS  
Director of Revenue

Certified to Secretary of State December 2, 2013